

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

ORIGINAL

75-4249

United States Court of Appeals

FOR THE SECOND CIRCUIT

In the Matter of the Claim for Compensation under the
Longshoremen's and Harbor Workers' Compensation Act
made by

CARMELO BLUNDO,

Claimant-Respondent,

--against--

**INTERNATIONAL TERMINAL OPERATING
COMPANY, INC.,**

Self-Insured Employer-Petitioner,

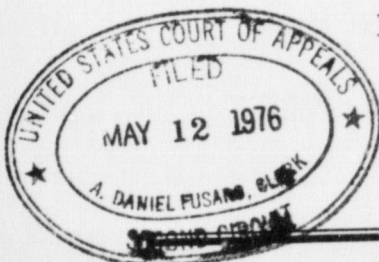
--and--

**DIRECTOR OFFICE OF WORKERS' COMPENSATION
PROGRAMS, UNITED STATES DEPARTMENT OF
LABOR,**

Respondent.

**On Review of Decision of the Benefits Review Board of the
United States Department of Labor**

REPLY BRIEF FOR EMPLOYER-PETITIONER



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Petitioner*
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REPLY BRIEF FOR EMPLOYER-PETITIONER

At Point VII, page 15, of brief for respondent, reference is made to evidence at the trial that cargo on which claimant was working at the time of his injury was to be stripped in a bonded warehouse under the supervision of the United States Customs personnel.

Whether the cargo was or was not to be put in a bonded warehouse was never an issue before the deputy commissioner and formed no part of the decision of the administrative law judge (8a-17a), or of the Benefits Review Board (20a-24a).

We contend that it is immaterial as to whether in fact there was or was not a bonded warehouse at that point since handling of cargo in a bonded warehouse does not involve the loading or unloading of a ship. Questions in that respect therefore are immaterial.

Factually the witness produced on behalf of the employer stated that he did not know of any formal bonded warehouse at the location where claimant was working (98a). It is also apparent that the claimant did not know what a bonded warehouse is. After defining it as a place where cargo coming from a container is stored he admitted that not all cargo was put in a bonded warehouse and he thought the word bonded meant insured (121a). He further stated that this meant it was under the custody of the United States Customs and that there was a difference between cargo in the custody of United States Customs as contrasted with cargo held under bond (122a).

The Administrative Law Judge indicated that he didn't believe that the claimant understood the difference between customs custody and cargo kept in bond (122a, 123a).

We submit however, that all of the foregoing is immaterial and no finding of fact has been made either by the administrative law judge or by the Benefits Review Board in this respect.

We contend however, that determination of jurisdiction in this case is not affected one way or the other as to whether some of the cargo may or may not have been

kept in a bonded warehouse at the facility where claimant was working at the time of his injury.

Respectfully submitted,

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LEONARD J. LINDEN
Of Counsel

United States Court of Appeals
For the Second Circuit

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and

Director office of Workers' Compensation Programs
United States Department of Labor
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of the United States Department of Labor

AFFIDAVIT
OF SERVICE

STATE OF NEW YORK,

COUNTY OF NEW YORK, ss:

Raymond J. Braddick, agent for Linden & Gallagher Esqs. being duly sworn,
deposes and says that he is over the age of 21 years and resides at
Levittown, New York

That on the 12th. day of May, 1976

he served the annexed Reply Brief upon

1. Israel, Adler, Ronca & Gucciardo, Attorneys for Claimant-Respondent
160 Broadway, New York, New York
2. William J. Kilberg, Solicitor of Labor
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200 Constitution Avenue N.W. Washington D.C. 20210 Suite N 2716
3. Thomas D. Wilcox Esq.,
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4. Thomas W. Gleason Jr.,
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to each of

in the Post Office regularly main-

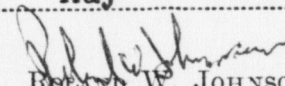
tained by the United States Govern...

90 Church Street, New York, New York

directed to the said attorneys for the parties as listed above at the addresses aforementioned,
that being the addresses within the state designated by them for that purpose, or the places
where they then kept offices between which places there then was and now is a regular com-
munication by mail.

Sworn to before me, this 12th.

day of May, 1976


ROLAND W. JOHNSON,
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977

